A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.24189 of 2025
CNR No- ODHC010614872025

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

M/S Ferro Alloys Corporation Ltd., Bhadrak & Anr. .... ***Petitioner (s)***

-versus-

Union of India & Ors. .... ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s) : *Mr. Ashok Kumar Parija, Senior Advocate along with associates Mr. V. Mohapatra, Advocate.*

For Opposite Party (s) : *Mr. Biswajit Moaharana, Senior Panel Counsel for O.P No.1 Mr. Susanta Kumar Mishra, Advocate for O.P Nos.2 & 3).*

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-13.08.2026
DATE OF JUDGMENT:-09.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioners, by filing this Writ Petition, have challenged the Minutes of the 74th Meeting of the State Expert Appraisal Committee ("SEAC") dated 17.6.2025 recommending rejection of the Petitioners' application for Environmental Clearance ("EC") proposal for the Katasahi Mining Block, and the consequential letter dated 21.7.2025

issued by the State Environment Impact Assessment Authority ("SEIAA") rejecting the Petitioners' EC application, solely on the basis of the Hon'ble Supreme Court's judgment passed in ***Vanashakti v. Union of India***[1] hereinafter also referred to as *'Vanashakti-I'*. The Petitioners also assail the earlier Minutes of SEAC dated 20.8.2022 and the Terms of Reference dated 03.11.2022 issued by SEIAA, to the extent that they have wrongly treated the Petitioners' application as a "violation case".

I. FACTUAL MATRIX OF THE CASE

2. The Petitioner No.1, M/s. Ferro Alloys Corporation Ltd. (FACOR), was granted a mining lease on 1.8.1998 in respect of an area measuring 13.674 hectares situated in Katasahi village, Keonjhar District, Odisha. The lease, which was originally granted for a period of 20 years, was subsequently extended under Section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 and presently stands extended up to 31.07.2048.

3. FACOR had applied for Environmental Clearance (EC) in respect of the mine on 7.8.2008. Terms of Reference were issued on 7.7.2009. The proposal was thereafter considered for enhancement of the proposed production from 6,000 TPA to 20,000 TPA and certain further information was sought by the State Level Expert Appraisal Committee (SEAC). The application did not culminate in grant of Environmental

[1] 2025 INSC 718

Clearance. The mining operations were subsequently stopped for want of Environmental Clearance.

4. In the meantime, proceedings were initiated against the erstwhile management in relation to mining operations undertaken without Environmental Clearance. A criminal case under Section 15 of the Environment (Protection) Act, 1986 was instituted before the learned J.M.F.C., Barbil. In proceedings arising out of ***Common Cause v. Union of India***[2], compensation was also demanded under Section 21(5) of the MMDR Act, 1957. The demand raised by the State authorities on 2.9.2017 was in respect of the earlier period of mining operations.

5. FACOR thereafter underwent Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016. The proceedings commenced upon admission of the application by the National Company Law Tribunal, Kolkata on 6.7.2017. A Resolution Plan submitted by M/s. Sterlite Power Transmission Ltd. was approved by the National Company Law Tribunal, Cuttack on 30.1.2020. Pursuant to the approved Resolution Plan, the Board of Directors of FACOR was reconstituted and the management and control of the company passed to the new management with effect from 21.9.2020.

6. The Resolution Plan contained provisions concerning liabilities and proceedings relating to the period preceding the Plan Effective Date, including proceedings arising out of non-compliance with applicable laws and proceedings relating to the mining leases held by the

[2] (2017) 9 SCC 499

company. The petitioner relies upon these provisions, as well as Sections 31 and 32A of the IBC, in support of its case concerning the effect of the approved Resolution Plan.

7. The compensation demanded under Section 21(5) of the MMDR Act was quantified by the State authorities at Rs.10,41,47,899/-. FACOR states that, notwithstanding its contention that the liability stood extinguished under the approved Resolution Plan, it deposited a sum of Rs.11,20,23,192/- on 22.3.2021 under protest.

8. On 9.3.2022, after the change in management, FACOR submitted an application for Environmental Clearance in respect of the Katasahi mine. The proposal was for future mining operations. The proposal contemplated production of 28,119 TPA of ROM manganese ore, with total excavation of 68,289 TPA, from the 13.674 hectare lease area. The application was uploaded on the Parivesh portal on 10.3.2022.

9. The proposal was placed before SEAC on 13.4.2022. SEAC sought clarification on, *inter alia*, the fact that the mine had gone into production during 2010-11 and 2011-12 without Environmental Clearance and had thereafter been closed for want of Environmental Clearance and Forest Clearance. SEAC specifically called upon FACOR to explain why the proposal should not be treated as a violation case. Other environmental and land-use issues were also raised, including the presence of a primary school within the lease area, a school adjacent to the lease area, a cremation ground and grazing land.

10. FACOR responded on 6.6.2022. In that communication, it referred to the violations as having been committed by the erstwhile management

and to the subsequent completion of the CIRP and change in management. The response also referred to the payment of Rs.11,20,23,192/- towards compensation under Section 21(5) of the MMDR Act.

11. On 20.8.2022, SEAC recommended that the proposal be considered as a violation category case and recommended issuance of Terms of Reference. On 3.11.2022, SEIAA issued the Terms of Reference, expressly stating that the proposal was to be considered as a violation category project on the ground that the erstwhile management had operated the mine without a valid Environmental Clearance. The Terms of Reference contemplated an EIA study, public hearing and a remediation plan and natural and community resource augmentation plan for the violation period.

12. The petitioner thereafter proceeded with the environmental appraisal. The public hearing was eventually conducted on 16.8.2024. The proceedings of the public hearing, the Final EIA Report, Environment Management Plan, mining plan and other documents were thereafter submitted/uploaded for processing of the Environmental Clearance proposal.

13. While the proposal was being processed, proceedings were pending before the Hon'ble Supreme Court in *Vanashakti-I*. By order dated 2.1.2024, the Hon'ble Supreme Court stayed the operation of the Office Memorandum dated 7.7.2021. In consequence, SEAC recommended return of FACOR's proposal and, on 2.11.2024, the proposal was returned on the ground that grant of Environmental Clearance or

Terms of Reference in violation category cases could not then be considered.

14. On 19.2.2025, during the pendency of the proceedings before the Hon'ble Supreme Court, directions were issued that applications seeking ex-post facto clearances on the basis of the 2021 Office Memorandum be processed, though the final order granting approval or clearance was not to be passed. The petitioner thereafter requested that its proposal be processed. SEAC, on 22.4.2025, sought further details, including details concerning the violation penalty and damage assessment.

15. On 16.5.2025, the Hon'ble Supreme Court pronounced judgment in *Vanashakti-I*. The judgment struck down the Notification dated 14.3.2017 and the Office Memorandum dated 7.7.2021, and restrained the Central Government from issuing circulars, orders, Office Memoranda or notifications providing for grant of ex-post facto Environmental Clearance or regularising acts done in contravention of the EIA Notification, 2006.

16. Following the said judgment, FACOR addressed a communication dated 20.5.2025 to SEAC. It maintained that the 2021 Office Memorandum did not apply to its case, reiterated its position regarding the change in management pursuant to the CIRP and requested that the application be considered as one for fresh Environmental Clearance for future mining operations. FACOR also stated that no mining activity had been carried out after the new management took over.

17. On 17.6.2025, SEAC recommended return of the proposal in view of the judgment dated 16.5.2025 in *Vanashakti-I*. On 21.7.2025, SEIAA rejected the Environmental Clearance proposal. The rejection referred to the decision of the Hon'ble Supreme Court striking down the 2017 Notification and the 2021 Office Memorandum. It also recorded that Stage-I Forest Clearance had not been submitted at that stage.

18. FACOR thereafter submitted a representation dated 18.8.2025 seeking reconsideration of the decision of SEIAA. The representation did not result in a decision, and the present writ petition came to be instituted challenging, *inter alia*, the SEAC recommendation dated 17.6.2025, the SEIAA decision dated 21.7.2025 and the earlier decision of SEAC dated 20.8.2022 and Terms of Reference dated 3.11.2022 insofar as the proposal had been placed in the violation category.

19. During the pendency of the present proceedings, the Hon'ble Supreme Court, on 18.11.2025, allowed the review of the judgment dated 16.5.2025 in ***Confederation of Real Estate Developers of India (CREDAI) v. Vanashakti***[3], hereinafter also referred to as *'Vanashakti-II'*, and recalled the earlier judgment. The matters were thereafter considered afresh.

20. The Hon'ble Supreme Court subsequently has recently pronounced judgment on 29.7.2026 in ***Vanashakti v. Union of India*** [4] hereinafter also referred to as *'Vanashakti-III'*. The judgment reconsidered the validity of the 2017 Notification and the 2021 Office Memorandum and,

---

[3] 2025 INSC 1326

[4] 2026 INSC 761

while issuing directions concerning Environmental Clearances already granted and applications pending consideration, specifically provided in Paragraph 79(c) that an application dismissed, returned or delisted solely with reference to the order dated 2.1.2024 and/or the judgment in *Vanashakti-I* may be reconsidered by the authority concerned in light of the observations made in the judgment. Paragraph 80(viii) further directed that all applications made under the impugned instruments, whether pending or dismissed solely with reference to the order dated 2.1.2024 and/or *Vanashakti-I*, shall be dealt with in terms of Paragraph 79.

21. It is also pertinent that subsequent to the filing of the writ petition, Stage-I Forest Clearance in respect of the project was granted on 1.4.2026 for the forest area involved in the project.

22. The controversy, therefore, now arises in the context of the judgment of the Hon'ble Supreme Court dated 29.7.2026 in *Vanashakti-III*, which was pronounced after the impugned decision of SEIAA.

II. PETITIONERS' SUBMISSIONS:

23. Learned counsel appearing for the petitioners submitted that the rejection of the Environmental Clearance proposal cannot be sustained after the judgment of the Hon'ble Supreme Court in *Vanashakti-III*. The proposal had been rejected by SEAC and SEIAA only because of the judgment in *Vanashakti-I*. That judgment, however, was subsequently recalled in review and the matter was finally decided by the Hon'ble Supreme Court on 29.7.2026.

24. It was submitted that *Vanashakti-III* specifically deals with the fate of applications which had been made under the 2017 Notification or the 2021 Office Memorandum and were thereafter returned, dismissed or delisted. Paragraph 79(c) permits such applications to be reconsidered by the authority concerned, particularly in view of the prospective quashing of the 2021 Office Memorandum. Paragraph 80(viii) directs that all such applications are to be dealt with in terms of paragraph 79. According to the petitioners, their application consequently stands revived and is required to be processed from the stage at which it was left.

25. Learned counsel further submitted that the objection regarding non-submission of Stage-I Forest Clearance, which had also found place in the order of SEIAA, does not survive. It was pointed out that, during the pendency of the writ petition, Stage-I Forest Clearance was granted by the Ministry of Environment, Forest and Climate Change on 01.04.2026 in respect of 8.846 hectares of forest land forming part of the project.

26. The earlier submission of the petitioners was also referred to. It was contended that the mining operations without Environmental Clearance were undertaken by the erstwhile management during 2010-11 and 2011-12. FACOR thereafter underwent CIRP and was taken over by the successful resolution applicant. According to the petitioners, Sections 31 and 32A of the IBC operate to give the corporate debtor, under the new management, a clean slate in respect of liabilities and consequences arising from the acts of the erstwhile management.

27. It was further submitted that the compensation liability arising from the pre-CIRP violations had itself been dealt with in proceedings before this Court. It was urged that there is no surviving liability or proceeding against the petitioner arising from the earlier violations which can constitute an impediment to consideration of its present EC application.

28. Learned counsel submitted that the application made in 2022 was for Environmental Clearance for prospective mining operations. The petitioner was not seeking permission to continue or regularise mining operations undertaken without Environmental Clearance in the past. The application was accordingly required to be considered as a fresh application and not as an application for ex-post facto clearance.

29. It was contended that the petitioner had initially taken the position that its application was not a violation case. According to the petitioner, it was thereafter required by the authorities to proceed under the Office Memorandum dated 7.7.2021 and did so to avoid further delay in recommencing the mining operations. The subsequent treatment of the proposal as a violation case, therefore, could not alter the nature of the relief actually sought by the petitioner.

30. The petitioners accordingly seeks quashing of the SEAC recommendation dated 17.6.2025 and the consequential order of SEIAA dated 21.7.2025, and a direction to SEAC and SEIAA to treat the EC application as alive and pending and process it from the stage at which it stood prior to its rejection, in accordance with paragraph 79

of *Vanashakti-III*. It was also prayed that the application be disposed of within a time-bound period.

31. At the hearing, however, the petitioners submitted that, in view of the subsequent change in the law, their contentions founded on Sections 31 and 32A of the IBC may be left open, with liberty to raise those contentions in appropriate proceedings.

III. OPPOSITE PARTYS' SUBMISSIONS:

32. Learned counsel appearing for the Opposite Parties No.2 and 3, SEIAA and SEAC, submitted that the proposal of the petitioner was not treated as a violation case by the authorities without basis. The petitioner had itself disclosed that mining operations had been undertaken without Environmental Clearance in the years 2010-11 and 2011-12. When the proposal was placed before SEAC on 13.4.2022, the petitioner was specifically asked to explain why the proposal should not be treated as a violation case. In its reply dated 6.6.2022, the petitioner accepted that the case fell within the violation guidelines and also disclosed the payment of Rs.11,20,23,192/- towards compensation under Section 21(5) of the MMDR Act. On that basis, SEAC recommended issuance of violation ToR and SEIAA issued the ToR dated 03.11.2022 under the then prevailing framework.

33. It was further submitted that the petitioner thereafter proceeded under the same framework. It completed the EIA and EMP process and, on 29.3.2025, submitted its application for Environmental Clearance under the violation category. The material placed before SEAC also recorded

that the project proponent had undertaken to pay the penalty and carry out the remedial and community resource augmentation measures contemplated under the Standard Operating Procedure dated 7.7.2021. Thus, according to the respondents, the record does not support the contention that the authorities had unilaterally converted a fresh application into a violation case.

34. Learned counsel submitted that the decision taken by SEAC on 17.6.2025 and the consequential decision of SEIAA dated 21.7.2025 were in accordance with the law as it stood at that time. By judgment dated 16.5.2025 in *Vanashakti-I* the Hon'ble Supreme Court had struck down the Notification dated 14.3.2017 and the Office Memorandum dated 7.7.2021 and restrained the Central Government from providing for grant of ex-post facto Environmental Clearance or regularisation of acts done in contravention of the EIA Notification. In view thereof, the authorities could not proceed with the petitioner's proposal under the violation framework.

35. The respondents, however, fairly contend before this Court that, in terms of paragraph 79(c) read with paragraph 80(viii) of *Vanashakti-III*, applications which had been dismissed, returned or delisted solely on account of the order dated 2.1.2024 and/or the judgment dated 16.5.2025 may be reconsidered by the concerned authority. The respondents therefore submitted that the petitioner's application, having been delisted pursuant to the judgment dated 16.5.2025, can be reconsidered by the competent authority in accordance with the directions contained in the subsequent judgment.

36. In the light of the subsequent judgment of the Hon'ble Supreme Court, the respondents submitted that the writ petition need not result in a direction to grant Environmental Clearance, nor would it be appropriate for this Court to determine the environmental suitability of the project. At the highest, the proposal may be permitted to be reconsidered by the competent authority in accordance with the law declared by the Hon'ble Supreme Court and subject to satisfaction of all statutory requirements. The respondents accordingly submitted that any further consideration of the petitioner's proposal will remain within the limits prescribed by the judgment dated 29.7.2026

IV. ISSUES FOR CONSIDERATION:

37. Upon hearing the submissions, the following solitary question arises for consideration:

A. Whether, in view of the judgment of the Hon'ble Supreme Court dated 29.07.2026 in *Vanashakti v. Union of India*, the petitioner's Environmental Clearance proposal may be reconsidered?

38. The question has to be examined in the context of the three successive decisions of the Hon'ble Supreme Court in *Vanashakti*. The first decision dated 16.5.2025 was the basis on which the petitioner's application came to be returned. That decision was thereafter recalled on 18.11.2025. The matter was subsequently decided afresh on 29.7.2026.

39. In *Vanashakti-I*, the Hon'ble Supreme Court considered the validity of the Notification dated 14.3.2017 and the Office Memorandum dated

7.7.2021, under which projects which had commenced without prior Environmental Clearance could seek Environmental Clearance upon compliance with the prescribed requirements. The Court held that the two instruments were illegal. In paragraph 36, the Court directed:

> *"We hold that the 2017 notification and the 2021 OM as well as all circulars/orders/OMs/notifications issued for giving effect to these notifications are illegal and are hereby struck down."*

40. The Hon'ble Apex Court further restrained the Central Government from issuing any instrument providing for grant of ex post facto Environmental Clearance or regularisation of acts done in contravention of the EIA Notification. At the same time, Environmental Clearances already granted under the two instruments were protected.

41. The consequence of *Vanashakti-I* was that the mechanism under which violation cases were being processed was no longer available. The Ministry of Environment, Forest and Climate Change accordingly circulated the judgment for compliance, and the SEAC, Odisha recorded that violation proposals already processed and pending at the SEAC/SEIAA level could be returned to the project proponents.

42. The petitioner's application was one such proposal. The SEAC, in its meeting dated 17.6.2025, recommended that the proposal be returned to the petitioner in view of *Vanashakti-I*, and SEIAA thereafter rejected the proposal on 21.07.2025. Thus, the rejection in the present case was not an independent decision on the merits of the petitioner's proposal. It followed the legal position then prevailing after *Vanashakti-I*.

43. *Vanashakti-I*, however, was subsequently subjected to review. In *Vanashakti-II*, the review petition was allowed by a majority of 2:1. The judgment dated 16.5.2025 was recalled and the writ petitions and appeal were restored to file. Thus, the very judgment which had formed the basis of the impugned action in the present case ceased to operate upon the passing of *Vanashakti-II*.

44. The matter thereafter came to be finally considered by a three-Judge Bench, resulting in *Vanashakti-III*, dated 29.7.2026. The Hon'ble Supreme Court dealt specifically with the fate of Environmental Clearances already granted and applications which were pending, returned or delisted under the 2017 Notification and the 2021 Office Memorandum.

45. The Hon'ble Apex Court, in paragraph 79, drew a distinction between applications which remained pending and those which had been affected by the interim order dated 02.01.2024 or *Vanashakti-I*. Paragraph 79(b) directed that pending applications under the 2017 Notification or the 2021 Office Memorandum be taken to their logical conclusion in accordance with law. Paragraph 79(c) then specifically provided:

> *"Any application dismissed, returned or delisted solely with reference to the stay order dated 02.01.2024 and/or the judgment in Vanashakti-I may be reconsidered by the authority concerned"*

46. The Court further directed that such reconsideration be undertaken in the light of the observations made in *Vanashakti-III*, particularly the prospective quashing of the 2021 Office Memorandum.

47. Paragraph 79(d) is also relevant. The Hon'ble Supreme Court directed that no fresh application for grant of Environmental Clearance under the aforesaid instruments shall be entertained. The effect is therefore not that a project proponent whose application was affected by *Vanashakti-I* must start the process all over again. The direction is to deal with an existing application in accordance with paragraph 79.

48. The position was put beyond doubt in paragraph 80(viii), where the Hon'ble Supreme Court held:

> *"All applications for grant of EC made under the impugned instruments, whether they remain pending or stand dismissed solely with reference to the stay order dated 02.01.2024 and/or the judgment in Vanashakti-I, shall be dealt with in terms of the directions in paragraph 79 of this judgment."*

49. The present case falls for consideration against this sequence. The petitioner's proposal was processed as a violation case; it was pending before the authorities when *Vanashakti-I* was pronounced; the SEAC thereafter recommended its return on the basis of that judgment; and SEIAA rejected the proposal on the same basis. The subsequent recall of *Vanashakti-I* in *Vanashakti-II*, followed by the specific directions in *Vanashakti-III* concerning applications returned or delisted with reference to *Vanashakti-I*, therefore directly bears upon the petitioner's application.

50. Significantly, Opposite Party Nos. 2 and 3 have themselves addressed the effect of *Vanashakti-III* in their Argument Memo dated 12.8.2026. After referring to paragraph 80(viii), they have stated:

> *"Thus, the application of the Petitioners for EC which was delisted can be revived and reconsidered by the authority as per Para 79 (C) of the judgement."*

51. The respondents have thus themselves accepted that the petitioner's delisted application is capable of being revived and reconsidered under paragraph 79(c) of *Vanashakti-III*. Their present stand is therefore not that the application stands finally extinguished by the order dated 21.07.2025, but that the same can be reconsidered in terms of the directions issued by the Hon'ble Supreme Court.

V. CONCLUSION:

52. The application of the Petitioner was returned pursuant to *Vanashakti-I*, which was subsequently recalled in *Vanashakti-II*, and *Vanashakti-III* now specifically provides for reconsideration of an application which has been dismissed, returned or delisted with reference to *Vanashakti-I*.

53. The stand taken by Opposite Party Nos. 2 and 3 in their Argument Memo also makes the position clear. They have themselves stated that the petitioner's application "*can be revived and reconsidered by the authority as per Para 79 (C)*" of *Vanashakti-III*. There is, therefore, no basis for the continued rejection of the application on the ground on which it was rejected on 21.7.2025. Accordingly, the recommendation of SEAC

dated 17.6.2025 and the consequential communication of SEIAA dated 21.7.2025, insofar as they proceed on the basis of *Vanashakti-I* are set aside.

54. Resultantly, the Petitioner will be at liberty to make a fresh representation to the competent authority to consider its application which may be dealt with by the competent authority in accordance with paragraph 79 of *Vanashakti-III* and the law applicable thereto.

55. Ordered accordingly.

56. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 9th October, 2026/-